

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**JULY 29, 1999**

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| <b>IN RE:</b>                                    | ) |                            |
|  | ) | <b>DOCKET NO. 99-00092</b> |
| <b>APPLICATION OF DSLnet COMMUNICATIONS, LLC</b> | ) |                            |
| <b>FOR CERTIFICATE OF PUBLIC CONVENIENCE AND</b> | ) |                            |
| <b>NECESSITY AS A COMPETING</b>                  | ) |                            |
| <b>TELECOMMUNICATIONS SERVICE PROVIDER</b>       | ) |                            |

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**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

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On May 18, 1999, this matter came before the Tennessee Regulatory Authority ("Authority"), upon the application of DSLnet Communications, LLC ("DSLnet") for a Certificate of Convenience and Necessity as a Competing Telecommunications Service Provider within the State of Tennessee (the "application"). The application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

**LEGAL STANDARD FOR GRANTING CCN**

DSLnet's application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

- (a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the Authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operations of which would

constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

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- (b) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

- (1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and
- (2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An Authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

- (c) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority: (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

### INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. §65-4-204. No party intervened.

## DSLnet COMMUNICATIONS HEARING

DSLnet's application was uncontested. At the hearing held on May 18, 1999, DSLnet was represented by Henry Walker of Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Ms. Wendy Bluemling, Director of Regulatory Affairs, presented testimony and was subject to examination by the Authority's Directors. Upon DSLnet's conclusion of the proof in its case, the Authority granted DSLnet's application based upon the following findings of fact and conclusions of law:

### **I. APPLICANT'S QUALIFICATIONS**

1. DSL Net is a limited liability company organized under the laws of the State of Tennessee on December 12, 1998, and received its Certificate of Authority to transact business in the State of Tennessee on December 9, 1998.

2. The complete street address of DSLnet Communications, LLC is 545 Long Wharf Drive, New Haven, Connecticut 06511. The phone number is (203) 782-7440 and fax number is (203) 624-3612. DSLnet Communications, LLC's counsel is Henry Walker, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219.

3. The application and supporting documentary information existing in the record indicate that DSLnet has the requisite technical and managerial qualifications necessary to provide local exchange and interexchange telecommunications service in Tennessee. DSLnet's management team has considerable experience in marketing, network operations, engineering, financial analysis/accounting, sales, regulatory and other relevant areas.

4. DSLnet has the necessary capital and financial qualifications to provide the services it proposes to offer.

5. DSLnet has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. PROPOSED SERVICES**

1. DSLnet initially intends to provide data transmission services only but will later provide a full range of local exchange and interexchange services. DSLnet will deploy xDSL technology to provide high-speed, high quality data connections. DSLnet proposes to provide service over its own facilities, through the use of unbundled network elements purchased from other certificated carriers and through the resale of the services of other carriers.

2. Except as may be allowed by state or federal law, DSLnet will not offer service in areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines, as described within Tenn. Code Ann. § 65-4-201(d).

## **III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the application and the record in this matter, the Authority finds that approval of DSLnet's application would inure to the benefit of the present and future public convenience by promoting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

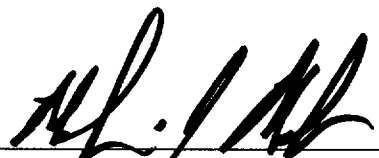
## **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

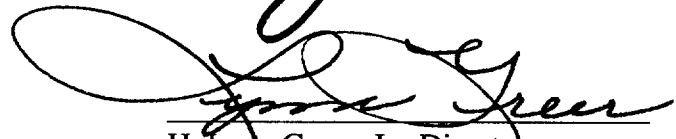
1. DSLnet has filed a small and minority-owned telecommunications business participation plan pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's rules.

2. DSLnet has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

**IT IS THEREFORE ORDERED:**

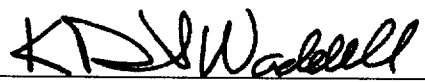
1. DSLnet Communications, LLC 's application is approved.
2. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
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Melvin J. Malone, Chairman

  
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H. Lynn Greer, Jr., Director

  
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Sara Kyle, Director

ATTEST

  
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K. David Waddell, Executive Secretary